



JOHN CORNYN

January 24, 2001

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2001-0264

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143541.

The El Paso Police Department (the "department") received a request for "any and all public documents surrounding the death of Raul Moreno on July 17, 2000 at the Sunland Park Mall," to include Internal Affairs reports, any offense or incident reports, any public statements that were released, and photos of any officers involved in the incident. A subsequent request seeks "[a]ny documents pertaining to the investigation by the Shooting Review Team into the July 17 shooting by police officer Tyler Grossman of Raul Moreno at the Sunland Park Mall." You have submitted information to this office that is responsive to both requests, so we will consider them together with the identification number listed above. You inform this office that certain responsive information has been released to one of the requestors, but claim that the remaining responsive information is excepted from disclosure under sections 552.103, 552.108, 552.117, 552.119,¹ and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹Section 552.119 of the Government Code excepts from disclosure photographs of peace officers. However, the submitted records include no photographs. We therefore do not address your section 552.119 assertion.

²We assume that the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other

Initially, we note that the Seventy-sixth Legislature amended section 552.022 of the Government Code to make certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. Section 552.022 now states in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law.

One such category of expressly public information under section 552.022 is “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108” Gov’t Code § 552.022(a)(1). Information contained in submitted Exhibits B and C appears to fall within the ambit of section 552.022(a)(1). However, as you assert that the information in both of these exhibits is excepted from disclosure under section 552.108 of the Government Code, we will consider your argument under that section.

Section 552.108, the “law enforcement exception,” provides in pertinent part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime;

. . . .

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You state that “as standard practice in all officer-involved shooting cases, criminal and administrative Shooting Review Team investigations are conducted regarding officer-involved shootings. Upon conclusion of the investigations, the case is then presented to the District Attorney’s Office for their review and consideration.” You further inform us that the department’s investigation in this case was presented to the District Attorney’s office, and that the case is currently pending in that office. As the requested information therefore relates to a case that is pending before the District Attorney, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime, and thus, it is excepted from disclosure under section 552.108(a)(1). *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th

requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, we note that “basic information about an arrested person, an arrest, or a crime” is not excepted from required public disclosure. Gov’t Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Houston Chronicle Publ’g Co., supra*; Open Records Decision No. 127 (1976). You inform us that the department has released to the first requestor a copy of the incident report with vehicle identification and license plate numbers redacted as required by section 552.130³ of the Government Code, as well as a narrative of the facts of the incident and the two press releases contained in Exhibit D. You assert that the second requestor is not entitled to basic information because he only requests documents related to the investigation by the Shooting Review Team, and that only the information from the criminal investigatory file that was released to the first requestor is subject to 552.108(c). We disagree. Upon review of the information submitted in Exhibit C, we conclude that basic information must also be released to the second requestor from the records contained in that exhibit. *Cf.* Open Records Decision No. 134 (1976) (portions of state fire marshall’s report reflecting basic factual information made available under *Houston Chronicle* not excepted under the statutory predecessor to section 552.108).

To summarize, the department may withhold the requested information pursuant to section 552.108(a)(1) of the Government Code, with the exception of basic information, which must be released to the second requestor from the records contained in Exhibit C. As we resolve your request under section 552.108, we need not address your arguments under section 552.103, 552.117, 552.119 and 552.130.⁴

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

³Section 552.130 of the Government Code provides in part that information is excepted from the requirement of Section 552.021 if it relates to: (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or] (2) a motor vehicle title or registration issued by an agency of this state[.]

⁴In this regard, we note that basic information may not be withheld from disclosure under section 552.103. *See* Open Records Decision No. 597 (1991) (concluding that statutory predecessor to section 552.103 did not except basic information in offense report).

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 143541

Encl. Submitted documents

cc: Ms. Jennifer Cameron
FOX-TV Dallas
400 North Griffin
Dallas, Texas 75202
(w/o enclosures)

Ms. Louie Gilot
El Paso Times
PO Box 20
El Paso, Texas 79999